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WT Docket No. 96-6

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to provide any service, including any fixed service, and, in keeping with regulatory parity goals, regulate all CMRS providers, even if they additionally offer fixed wireless services, as CMRS providers. Finally, U S WEST supported the Commission's proposal to consider universal service issues in the dedicated universal service proceeding.³ The vast majority of the commenters applaud the Commission's proposal to allow CMRS providers to offer fixed wireless services. The comments below respond to the handful of commenters opposing the Commission's proposal and the regulatory parity and local competition goals of Congress.

I. THE COMMISSION SHOULD ALLOW CMRS PROVIDERS TO OFFER FIXED AND MOBILE SERVICES

Consistent with U S WEST's comments, other comments filed in this proceeding overwhelmingly support permitting CMRS licensees to provide fixed wireless local loop services in their assigned frequencies.⁴ In fact, most commenters urge the Commission to make it clear that CMRS providers can offer fixed wireless services without restriction.⁵ One commenter encourages the Commission further and urges it to give CMRS providers sufficient flexibility to lease excess spectrum

³ U S WEST notes that on March 8, 1996, the Commission released a Notice of Proposed Rulemaking concerning implementation of universal service issues in the Telecommunications Act of 1996. In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93, rel. Mar. 8, 1996.

⁴ See, e.g., U S WEST at 1; Century at 3; PACS at 3; BellSouth at 1; Telular at 1.

⁵ Id.

capacity.⁶ U S WEST wholeheartedly supports this proposal and has previously presented in writing the merits of this idea -- such as efficient spectrum use -- to the Commission.⁷

Commenters assert that there is sufficient CMRS spectrum to allow fixed services in the bands, especially given the emergence of digital technology,⁸ and that the marketplace, rather than regulations, will best determine what services CMRS licensees should provide.⁹ Only two commenters, out of fifty, objected to the Commission's flexible service offerings proposal: NARUC and PCS One. Significantly, neither NARUC nor PCS One challenge the facts -- recognized by several other commenters -- regarding the availability of CMRS spectrum for fixed uses, or the benefits of allowing consumers to decide what services CMRS providers should offer.

PCS One believes that Personal Communications Service ("PCS") should be given time to "catch up" to the cellular industry in order to create a level playing field.¹⁰ PCS One is proffering nothing more than a protectionist stance inconsistent with the regulatory parity objectives of Section 332 of the Omnibus Budget

⁶ SBC at 4.

⁷ See Letter from Elridge A. Stafford, to Amy Lesch, Office of Plans and Policy (Jan. 11, 1996) (summary of proposed testimony urging the Commission to authorize licensees to disaggregate spectrum through sale or lease).

⁸ See, e.g., U S WEST at 2-3; AMTA at 6-7; Sprint Spectrum at 3.

⁹ See, e.g., U S WEST at 5; Celpage at 4-5; Alliance at 6.

¹⁰ PCS One at 2.

Reconciliation Act of 1993 (hereinafter referred to as “the Budget Act”).¹¹ Under the Budget Act, Congress sought regulatory symmetry -- not disparate regulatory treatment, as PCS One proposes -- among mobile service providers.¹² The Commission and many commenters comprehend the goals of Section 332;¹³ PCS One does not. Consistent with the Budget Act, if the Commission allows PCS providers to offer fixed services, it must allow cellular and special mobile radio licensees the same flexibility.

NARUC also objects to flexible service offerings by CMRS providers, claiming that allowing CMRS providers to offer fixed service would promote a “Federal policy that is not technology neutral and has the impact of favoring deployment of one technology over another.”¹⁴ NARUC’s objection, while true, is irrelevant. It is axiomatic that landline service providers and wireless service providers are regulated differently. Of course, the more onerous rules apply to wireline service. Congress selected this regulatory framework and it cannot now be fundamentally changed. However, if the Commission were to follow NARUC’s logic and prohibit CMRS providers from offering fixed services, the only losers would be consumers,

¹¹ 47 USC § 332.

¹² Id. See also 139 Cong. Rec. 5792, H 5919 (Aug. 4, 1993); 139 Cong. Rec. 7913, S 7949 (June 24, 1993); 139 Cong. Rec. 7815, S 7856 (June 24, 1993); NPRM ¶ 19; In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd. 1411, 1509 ¶ 263 (“Second Report and Order”); Third Report and Order, 9 FCC Rcd. 7988 (1994) (collectively “Implementation Orders”).

¹³ See NPRM ¶ 19. See, e.g., CTIA at 4; Nextel at 3; PCIA at 4-5.

¹⁴ NARUC at 4.

who would remain without choice. As many commenters discuss, allowing CMRS providers to offer fixed services will actually have the opposite impact and promote local loop competition and give consumers additional service choices; the Commission appears to agree.¹⁵

NARUC additionally contends that if CMRS providers are given the proposed flexibility in their service offerings, the States' ability to regulate local competition and pricing policies will be threatened.¹⁶ In other words, NARUC fears that the Commission's proposal will diminish State regulatory power. Like PCS One, NARUC's comments concern issues already resolved by Congress in Section 332 of the Budget Act and by the Commission in its Implementation Orders. Section 332(c)(3) requires the Commission to regulate CMRS providers; the offering of fixed services by a CMRS provider -- in addition to its mobile service offerings -- does not negate that mandate.¹⁷ What the States do not have cannot be taken away.

II. THE COMMISSION SHOULD REGULATE ALL CMRS PROVIDERS IN THE SAME MANNER

The bulk of the comments propose regulatory parity among all CMRS providers; the commenters differ, however, as to where the regulatory authority should be placed. For example, many commenters believe that the Commission

¹⁵ NPRM ¶ 1 ("The measures we propose should increase competition within wireless services and promote competition between wireless and wireline services."). See, e.g., SMR at 2; PCIA at 5; Western Wireless at 2.

¹⁶ NARUC at 5.

¹⁷ 47 USC § 332(c)(3). See also Second Report and Order, 9 FCC Rcd. at 1418-19 ¶ 16.

should regulate fixed services provided by CMRS licensees as an integral part of CMRS, as long as the provider offers interconnected, for-profit mobile service.¹⁸

Other commenters assert that any fixed service that substitutes for local exchange service should be regulated at the State level.¹⁹ U S WEST urges the Commission to regulate all CMRS providers, including landline local exchange carriers (“LEC”) that also provide CMRS service, in the same manner. In contrast, Comcast and NYDPS discard all notions of regulatory parity. Rather, they single out LECs which provide CMRS services and demand that those providers alone be subject to State commission oversight.²⁰

Comcast contends that “the Commission must adopt a bright-line rule establishing that all wireline services provided by entities that are either Tier I LECs or that are ‘Bell operating companies’ (‘RBOCs’) as defined by the Telecommunications Act of 1996 will not be treated for regulatory purposes as an ‘integral part’ of any CMRS services provided by those entities.”²¹ Similarly, NYDPS cautions the Commission that LECs which provide wireless loops should not be regulated as CMRS providers.²² Both commenters attempt to establish regulation of fixed wireless services on the basis of who will be providing the

¹⁸ See, e.g., SMR at 3; Telular at 9; CRB at 7.

¹⁹ See, e.g., Pacific Telesis at 3; Bell Atlantic at 4; BellSouth at 4.

²⁰ Comcast at 6-7; NYDPS at 3.

²¹ Comcast at 7.

²² NYDPS at 3.

service, rather than on the basis of the service that will be provided. These positions are clearly in conflict with the regulatory parity objectives of the Budget Act: similar services should be subject to the same regulation, regardless of who provides those services. To regulate LECs that provide CMRS differently than other CMRS providers would also undermine Congressional and Commission goals to increase competition and provide consumers with choices.

Comcast additionally states that “the Commission should impose structural separation on in-region incumbent LEC provision of CMRS.”²³ Comcast’s comments are nothing more than a belated reconsideration petition. The Commission has previously considered and resolved the structural separation issue as it relates to LEC provision of CMRS. After compiling an extensive public record on this issue, the Commission found that the public interest would be served by allowing LECs to provide PCS using accounting -- rather than structural -- separation.²⁴ That decision was not appealed. Further, as U S WEST noted in its earlier comments, the Court of Appeals for the Sixth Circuit recently remanded the issue of whether LECs should be subjected to structural separation in their provision of cellular service, with instructions to the Commission to consider whether cellular structural separation continues to serve as a necessary regulatory restriction on RBOCs.²⁵

²³ Comcast at 7.

²⁴ In the Matter of Amendment of the Commission’s Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd. 7700, 7751-52 ¶ 126 (1993) (“Indeed, by seriously limiting the ability of LECs to take advantage of their potential economics of scope, [structural separation] requirements would jeopardize, if not eliminate, the public interest benefits we seek through LEC participation in PCS.”)

²⁵ Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752 (6th Cir. 1995).

Finally, the Commission is expected to commence shortly a rulemaking concerning nonstructural safeguards.

In rehashing the structural safeguard issue in this proceeding, it becomes clear that Comcast is simply using the regulatory process to slow down competition. Its quest to impose further structural separation upon LEC provision of wireless services is already on record before the Commission;²⁶ the scope of this proceeding should not be broadened merely to further Comcast's crusade.

III. THE COMMISSION SHOULD CONSIDER UNIVERSAL SERVICE ISSUES IN SEPARATE PROCEEDINGS

Most commenters support addressing universal service issues in proceedings separate from this one.²⁷ A few commenters do, however, provide comment on how universal service issues relating to this proceeding should be resolved.²⁸ Given that the Commission has already issued its Notice of Proposed Rulemaking concerning implementation of the Telecommunications Act of 1996 as it relates specifically to universal service issues,²⁹ it is clear that the instant proceeding should not be complicated, nor its resolution prolonged, by issues better addressed in a proceeding focused solely on those issues. If need be, the Commission might consider issuing a

²⁶ See Letter from Warner K. Hartenberger, Dow, Lohnes & Albertson, on behalf of Comcast Corporation, AirTouch Communications, Inc. and Cox Enterprises, to William E. Kennard, General Counsel (Jan. 18, 1996).

²⁷ See, e.g., 360 at 3; Nextel at 4; NTCA at 4.

²⁸ See, e.g., Sprint Spectrum at 6-7; Orion at 2-3; ATA at 2.

²⁹ See supra note 3.

supplemental notice of proposed rulemaking that focuses entirely on universal service issues as they relate to CMRS.³⁰

IV. CONCLUSION

U S WEST urges the Commission to adopt rules to allow CMRS providers to offer any fixed services and to ensure that all CMRS providers are regulated in the same manner. In addition, the Commission should consider any associated universal service issues in the recently instituted universal service rulemaking proceeding.

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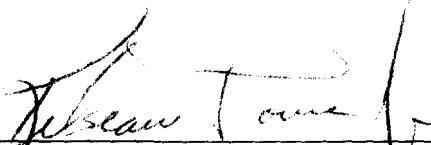
Of Counsel,
Dan L. Poole

March 25, 1996

³⁰ The Commission recently followed this course in CC Docket Nos. 95-185 and 94-54, wherein it asked interested parties to file additional comments regarding LEC-CMRS interconnection issues as they relate to the Telecommunications Act of 1996 (which had not yet been enacted when the initial Notice of Proposed Rulemaking was issued). See In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket Nos. 95-185 and 94-54, Order and Supplemental Notice of Proposed Rulemaking, FCC 96-61, rel. Feb. 16, 1996.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of March, 1996, I have caused a copy of the foregoing **U S WEST, INC. REPLY COMMENTS** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


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